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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,038	03/24/2004	Stephen C. Masters	79320	5670

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EXAMINER

ZANELLI, MICHAEL J

ART UNIT PAPER NUMBER

3661

DATE MAILED: 08/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/808,038

Applicant(s)

MASTERS ET AL.

Examiner

Michael J. Zanelli

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14 and 19-30 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,11 and 15-18 is/are rejected.
- 7) ☒ Claim(s) 3 and 5-10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/28/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. The application filed 3/24/04 has been examined. Claims 1-30 are pending.
2. The IDS filed 5/28/04 has been considered.
3. The drawings are objected to because blocks 15a and 15b of Fig. 1 must be labeled with descriptive legends.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

4. Claims 15-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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A. As per claim 15, the claim is unclear as to what the "at least one function" is in relation to. It appears that the claim should read --at least one function for calculating the rate of change--. This would provide context for the limitations set forth in dependent claims 16-18.

B. All claims depending from a rejected base claim are also rejected as containing the same deficiencies.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 4 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Young et al. (6,339,743).

A. As per claim 1, Young discloses a method of decreasing engine power when the measured rpm of the engine exceeds a maximum allowable rpm at a particular time.

Young discloses the method relative to drag racing in which the maximum allowable engine rpm varies based on a particular "time" in the race (i.e., burnout, staging, launch etc.). A programmer is used to allow one to set predetermined max rpm for the various "times" noted above. Engine power is decreased by altering spark ignition. See col. 1, lines 21-25, 55-61; col. 2, lines 41-49; col. 4, lines 16-62; col. 5, lines 19-22.

B. As per claims 2, 4 and 11, as above whereby comparisons between the current engine rpm and the maximum allowable rpm are performed throughout the race whereby

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each particular "time" in the race has its own predetermined maximum allowable rpm (col. 4, lines 17-19).

7. Claims 1, 2 and 11 are further rejected under 35 U.S.C. 102(b) as being anticipated by Bayron et al. (5,803,043).

A. As per claim 1, Bayron discloses a method of decreasing or limiting engine power based on a comparison of the current engine rpm and an allowable maximum rpm which may be defined for a particular time. The method allows one to program predetermined engine rpm for a particular time, in this case the time can be time of day (Abs; col. 5, lines 14-28; col. 6, lines 50-59; col. 10, lines 58-61).

B. As per claims 2 and 11, as above whereby Bayron discloses that engine rpm can be measured and compared to a maximum allowable rpm for a given "time" period (i.e., in the context of a curfew: Abs; col. 6, lines 50-59).

8. Claims 3, 5-10 and 12-30 are distinguishable over the prior art. As per claims 3 and 5-10, the prior art of record does not show or reasonably suggest, in combination with the other claimed subject matter, tracking a time from the reference (3) or interpolating between respective times (5,10) or including time-based functions related to the maximum rpm value (6-9). As per claim 12, the prior art of record does not show or reasonably suggest, in combination with the other claimed subject matter, providing at least one predetermined maximum allowable rpm rate of change and increasing a permitted target rpm at the predetermined maximum allowable rpm rate of change and using it for comparing with rpm of the engine at a subsequent time as claimed. Dependent claims 13-29 are distinguishable for at least the same reasons. As per claim 30, the prior art of record does not show or reasonably suggest, in combination with the other

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claimed subject matter, decreasing engine power in response to comparisons of the engine rpm based on a plot of maximum rpms vs. time rate and engine rpm relative to permitted target rpm for a subsequent time as claimed.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited documents represent the general state of the art.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Zanelli whose telephone number is (571) 272-6969.

The examiner can normally be reached on Monday-Thursday 8:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/mjz

  
MICHAEL J. ZANELLI  
PRIMARY EXAMINER